

ARKANSAS SUPREME COURT

No. CR 08-819

MARK SEXTON
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered December 11, 2008

APPELLANT'S PRO SE MOTION TO
FILE BELATED BRIEF AND
APPELLEE'S MOTION TO DISMISS
APPEAL [CIRCUIT COURT OF
LONOKE COUNTY, CR 2007-309,
HON. LANCE HANSHAW, JUDGE]

APPELLANT'S PRO SE MOTION TO
FILE BELATED BRIEF DENIED;
APPELLEE'S MOTION TO DISMISS
APPEAL GRANTED.

PER CURIAM

On November 14, 2007, judgment was entered reflecting that appellant Mark Sexton had entered a plea of guilty to a hot check offense, theft by deception, second-degree forgery and theft of property. He was sentenced as a habitual offender to an aggregate term of 300 months' imprisonment and ordered to make restitution in the amount of \$28,883.95.

On April 2, 2008, an order was entered in the trial court denying a pro se petition to correct sentence.¹ Appellant timely filed a notice of appeal from the order and lodged the record on appeal in this court. The appellant's brief was due to be filed September 2, 2008. On October 2, 2008, the appellee State filed the instant motion to dismiss the appeal based on appellant's failure to file a brief

¹The record lodged on appeal does not contain a copy of the petition to correct sentence. As a result, it cannot be determined from the record whether the petition was timely filed in the trial court. The grounds on which the court denied the petition did not include untimeliness of the petition. The record contains a copy of the motion to proceed *in forma pauperis* filed February 8, 2008. If the motion was filed with the petition, then the petition would have been timely filed pursuant to Arkansas Rule of Criminal Procedure 37.2(c).

within the time required. On November 4, 2008, appellant filed a motion to file a belated brief.

In the motion, appellant states that he has been held in a county jail on an unrelated charge and did not have access to writing paper or a law library to file a motion for extension of brief time.

Appellant offers no substantiation for the contention that he was unable to submit a timely motion for extension of time to file his brief because he was incarcerated in a county jail. He had already been allowed one extension of time and failed to comply with the extended deadline, and his bare assertion that he was held in the county jail without means to file a timely motion does not amount to good cause for his failure to conform to the prevailing rules of procedure. While appellant is proceeding pro se and is incarcerated, neither factor in itself entitles him to special consideration on appeal. *Robinson v. State*, 360 Ark. 307, 200 S.W.3d 905 (2005). We note that appellant tendered a motion for extension of time one day after the date on which the brief was due and was informed at that time by letter from one of our staff attorneys that a motion to file a belated brief would be required. Even after the State filed its motion to dismiss the appeal on October 2, 2008, appellant delayed approximately one month before filing the motion to file a belated brief. Under these circumstances, we do not find that appellant has stated good cause for his failure to pursue the appeal. Accordingly, his motion to file a belated brief is denied. The State's motion to dismiss the appeal is granted.

Appellant's pro se motion to file a belated brief denied; appellee's motion to dismiss appeal granted.